SB Civil Misc Appeal No. 1209/2001
Ram Sukh & ors Vs Gyan Chand & ors
17.7.2007

Hon'ble Mr Justice Ashok Parihar

Mr Nitin Jain – for claimants-appellants
None for the respondents
BY THE COURT:

The claimants appellants have challenged the award dated 12.7.2001 passed by the Motor Accident Claims Tribunal, Kekri, by which, in a case of death of a lady, the appellants have been awarded a sum of Rs.2,05,500/- with interest from the date of filing of the claim petition. Apart from prayer for enhancement of the compensation the award has also been challenged to the extent the Insurance Company – respondent No.3 has been exonerated by the Tribunal.

After hearing learned counsel for the appellants, I have carefully gone through the material on record.

The Tribunal, on the basis of evidence, has taken note of the age, occupation and notional income of the deceased as also dependency of the appellants while quantifying the amount of compensation. Since, after due consideration, proper discretion has been used by the

Tribunal, I find no error or illegality in the quantum of compensation.

However, the Tribunal has exonerated the Insurance Company only on the ground that the driver of the vehicle was having only learner's licence, as such, the Insurance Company is not liable to pay the compensation. Learned counsel for the appellants has referred to the judgment of the Hon'ble Supreme Court in the case of 'National Insurance Co Ltd Vs Swaran Singh & ors' (2004 ACJ [Vol 1] page 1), in which, the Apex Court has held that even if a vehicle, at the time of accident, is driven by a driver having a learner's licence, the Insurance Company would be liable to satisfy the decree. While referring to the provisions of Motor Vehicles Act, 1988, (the Act) the Supreme Court has observed that even if there exists a condition in a contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of section 149 (2) of the Act. Section 149 (2) of the Act provides for the grounds on which the defence can be taken by the Insurance Company. In view of the judgment referred to above and the observations made by the Supreme Court, the exoneration of the Insurance Company, in the present case, was not legal and justified.

Accordingly, the appeal is allowed. The impugned award dated 12.7.2001 is modified to the extent that the claimants appellants shall be free to realise the amount of compensation as awarded by the Tribunal jointly or severely from all the contesting respondents.

The accident took place in the year 1998. The award has been passed on 12.7.2001. The amount of compensation has not been realised till date. In the meanwhile, during pendency of the present appeal, appellant No.1, the husband of the deceased, also died. The appellants No. 2 and 3 have become major. Appellants No.4 and 5 are still minors. Considering entire facts and circumstances as also in the interest of justice, the Insurance Company – respondent No.3 is now directed to deposit the entire amount of compensation as awarded, before the Tribunal within thirty days from the date of receipt of certified copy of this order. The amount may be disbursed by the Tribunal in the following manner -

1- The appellants No.2 and 3 shall be paid a sum of Rs.50,000/- each without any condition of keeping the amount in fixed deposit.

2- Remaining amount be paid to appellants No.4 and 5

equally. The amount to be paid to the appellants No.4 and 5 be kept in fixed deposits with renewal after every two years till they attain majority through their eldest brother appellant No.2.

The record be sent back immediately.

(Ashok Parihar) J.

bnsharma